

EXHIBIT B

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

ROBERT GORDON,

Plaintiff-Appellee/Cross-Appellant,

v.

ERIC HOLDER, *et al.*,

Defendants-Appellants/Cross-Appellees.

Cases No. 12-5031, 12-5051

On Appeal from the United States District Court
for the District of Columbia, No. 10-CV-01092-HHK

DECLARATION OF ERIC PROSHANSKY

Eric Proshansky declares, under penalty of perjury, pursuant to 28 U.S.C. section 1746, as follows:

1. I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York. I make this declaration to provide background to the argument set forth in the accompanying Brief of *Amicus Curiae* City of New York In Support of Defendants-Appellants/Cross-Appellees. I include here only those facts pertaining to the delivery sales described as are necessary to provide that background.

2. On or about April 18, 2012, an investigator from the Office of the New York City Sheriff accessed the Plaintiff-Appellee/Cross-Appellant Robert Gordon's Internet website at www.allofourbutts.com and entered an order for two 200 count bags of "Rollies Menthol King." No sales tax was charged. The investigator paid by postal money order, which was mailed to "All Of Our Butts, 719 Broad Street, Salamanca, NY 14479."

3. On May 3, 2012, a delivery driver delivered to an office clerk at the address provided by the investigator a package determined to contain two clear plastic bags each holding 200 cigarettes. An invoice in the box specified "2 Rollies Menthol King 200ct Bag @ \$15," which were the cigarettes ordered from www.allofourbutts.com by the investigator.

4. The label on the package indicated a return address of "All Of Our Butts, 719 Broad Street, Salamanca, NY 14479."

5. The bags of cigarettes contained in the box were not affixed with either New York State or joint New York State-New York City tax stamps.

6. Investigators from the Office of the New York City Sheriff have made purchases of cigarettes from other delivery sellers located on Indian reservations in New York State. An investigation of one such delivery seller has determined that it has made delivery sales of thousands of cartons of unstamped cigarettes to New York City residents since the effective date of the PACT Act.

Dated: New York, New York
June 11, 2012

/s/ Eric Proshansky
Eric Proshansky